

Response to Public Comments for the North Dakota Class VI Primacy Application

Comment #1

One commenter expressed a concern regarding potential danger to the Ogallala aquifer.

Response #1

The Ogallala Aquifer is not present in the state of North Dakota, so implementation of the Class VI program in North Dakota by the North Dakota Industrial Commission would not endanger it. In addition, this program is designed to be protective of drinking water resources. Class VI wells are prohibited from injecting into underground sources of drinking water.

Comment #2

One commenter recommended denial of North Dakota's application to revise its section 1422 Underground Injection Control program to include Class VI. The commenter is concerned that the geo-sequestration of CO₂ is unsafe and recommends postponing an approval until conclusion of a study by the University of Texas.

Response #2

Prior to the promulgation of the UIC Class VI rules, EPA took many steps to prepare for the rulemaking. One of these steps was to participate in and support research on the geo-sequestration of CO₂ to inform the rulemaking. You can read more this at 75 Fed. Reg. 77230, 77238 (December 10, 2010). As a result of these preparatory steps, EPA has concluded that this technology is safe, and enough information to write regulations to implement the program. North Dakota's application, if approved, would allow the State to directly implement its own Class VI program

Comment #3

One commenter expressed concern that North Dakota was required to adopt some program elements in order to be "at least as stringent as the corresponding [federal] provisions" The commenter opined that "[t]he proper measure of stringency for a state program for the permitting of Class VI wells is whether the 'the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources.' 42 U.S.C. §300h(b)(1)(B)(i)." The commenter believed that this is disruptive to the State's normal administrative procedures.

Response #3

Pursuant to the Safe Drinking Water Act at 42 U.S.C. § 300h, EPA was directed to promulgate regulations to include minimum federal requirements for a UIC program. The regulations at 40 CFR parts 144-146 and 148 include these minimum federal requirements. As with all 1422 programs, if states wish to be authorized to implement these programs, they must demonstrate their program is as at least as stringent as the corresponding federal provisions. See 40 C.F.R. section 145.11.

Comment #4

One commenter had concerns about language in the Memorandum of Agreement (MOA) between the Commission and EPA. The commenter opined that "[i]n II.C, "Conformance with

Laws and Regulations”, the words “promulgated minimum requirements” should be deleted because these words add no additional meaning, and the ambiguity of the words will introduce potential confusion.”

Response #4

EPA has worked with North Dakota to revise the language in the MOA to provide greater clarity and reduced redundancies. Please see the revised MOA language.

Comment #5

One commenter urged EPA to revise the approach to eventual funding of Class VI that is reflected in the MOA. The commenter expressed that any grant funds awarded to North Dakota for the Class VI program should go directly through the Commission instead of through North Dakota Department of Health.

Response #5

When North Dakota was originally authorized to administer the 1422 program, the North Dakota Department of Health was designated as the lead agency. EPA funding can only go to the lead agency.